

JUN - 8 1992

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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List: A B C D E

1. By Hearing Designation Order (hereafter HDO), 7 FCC Rcd 2356 (1992), the Assistant Chief, Audio Services Division, designated for hearing four applications for new and modified non-commercial FM (hereafter NCE-FM) facilities on Channel 217 (91.3 MHz) at Hobson City, Alabama, Rome, Georgia, Gadsden, Alabama, and Oxford, Alabama. Gadsden State and the Oxford Channel 217A applicant (Trinity Christian Academy) timely filed notices of appearance on May 5, 1992. By separate orders, the Presiding Judge dismissed late filed notices of appearances by the Channel 217A applicants for Hobson City (Sable Community Broadcasting Corporation) and Rome (Board of Trustees Shorter College). Order, FCC 92M-605, released May 27, 1992, and Order, FCC 92M-614, released May 28, 1992. By Order, FCC 92M-644, released June 4, 1992, the Judge also granted Shorter College's motion to dismiss its application.

2. Gadsden State is the licensee of NCE-FM Station WSGN, Gadsden. WSGN presently operates on reserved Channel 218 with an effective radiated power of 3.5 KW and a height above average terrain (HAAT) of 23 meters. By its instant application, Gadsden State had proposed to operate WSGN as a Class C2 station on reserved adjacent Channel 217 with an ERP of 15 KW and an HAAT of 158.7 meters.

3. On May 21, 1992, Gadsden State tendered a Motion for Leave to Amend and an amendment to change its technical proposal to operate WSGN as a Class C3 station on its present Channel 218 with an ERP of 6.3 KW (DA) and an HAAT of 159 meters. On June 2, 1992,

the Mass Media Bureau filed comments in support of the Motion for Leave to Amend. By Memorandum Opinion and Order, FCC 92M-646, released June 4, 1992, the Presiding Judge granted Gadsden State's Motion and accepted its amendment.

4. In his HDO (§15), the Assistant Chief specified the following issue against Gadsden State:

2. To determine whether [Gadsden] State is in compliance with the provisions of 47 C.F.R. §73.525.

Section 1.251(a)(1) of the Rules provides that any party to an adjudicatory proceeding may move for summary decision of any specified issue, provided that the motion is filed at least 20 days prior to the date set for commencement of the hearing. The hearing in this proceeding is presently scheduled to convene on September 1, 1992 (Order, FCC 92M-483, released April 22, 1992); therefore, this Motion is timely filed.

5. Section 73.525 of the Rules undertakes to provide protection to television stations operating on Channel 6 from interference received from NCE-FM stations operating (or proposing to operate) on reserved channels (Channels 201-220). Section 73.525(a)(1) defines an affected TV Channel 6 station inter alia as one authorized to operate within 166 kilometers of a proposed NCE-FM station. Station WBRC-TV, Channel 6, Birmingham, Alabama (93 kilometers distant) is the only TV Channel 6 station within 166 kilometers of WSGN's proposed operation (Gadsden State's May 21, 1992 amendment (hereafter Amendment) p. 6).

6. Section 73.525(b) provides in substance that an affected Channel 6 station will be deemed protected by an NCE-FM modification proposal if - -

[T]he application for modification demonstrates that, for each person predicted to receive new interference as a result of the change, existing predicted interference to two persons will be eliminated. Persons predicted to receive new interference are those located outside the area predicted to receive interference from the station's currently authorized facilities ("existing predicted interference area") but within the area predicted to receive interference from the proposed facilities ("proposed predicted interference area"). Persons for whom predicted interference will be eliminated are those located within the existing predicted interference area and outside the proposed predicted interference area.

7. Gadsden State's engineering consultant (duTreil, Lundin & Rackley) conducted a study to determine the Channel 6 predicted interference areas under WSGN's existing and proposed operations (Ibid., p. 6, Figure 7, Appendix A hereto). A determination was also made of the population predicted to receive new interference and the population for which predicted existing interference would be eliminated (Ibid.).

8. The proposed Channel 6 predicted interference area is less densely populated than the existing predicted interference area. In consequence, operating as proposed, WSGN is predicted to cause interference to the Channel 6 reception of 7,760 persons and predicted to eliminate interference to the Channel 6 reception of an estimated 23,967 persons (Ibid.). Gadsden State's consultant concludes:

Therefore, for every person predicted to receive new interference, it is predicted that existing interference will be eliminated to slightly over 3 persons. Thus, the proposal complies with the requirements of 47 CFR 73.525(b)(2).

9. As observed in its May 21, 1992, Motion for Leave to Amend (¶4), prior to designation and on March 10, 1992, Gadsden State had tendered substantially the same technical amendment at the express invitation of the staff and in an effort to resolve mutual exclusivity between Gadsden State and all other applicants. The pre-designation amendment contained a Channel 6 protection study identical to the study submitted with Gadsden State's post-designation amendment. While returning Gadsden State's pre-designation amendment for reasons here irrelevant, in his HDO (¶8), the Assistant Chief observed that the Channel 218C3 technical proposal demonstrated compliance with Section 73.525 of the Rules.

10. Section 1.251(d) provides that the Presiding Judge may grant summary decision if there is no genuine issue as to any material fact and the moving party is otherwise entitled to such relief. Midwest St. Louis, Inc., 79 FCC2d 719, 48 RR2d 95 (1980). Here, Gadsden State has in substance shown that operating as proposed, it will eliminate predicted interference to Channel 6 reception to a net population of 16,027 persons. Gadsden State has also shown that for every person predicted to receive new interference, it is predicted that existing interference will be eliminated to over three persons in satisfaction of Section 73.525(b)(2) of

the Rules. Finally, the Assistant Chief has found that operating as proposed WSGN will comply with Section 73.525 of the Rules.

11. In sum, there is no genuine issue as to any material fact under Issue 2. Summary decision is otherwise warranted because the Judge not only may grant Gadsden State's application<sup>1/</sup> but possibly the application of Trinity Christian Academy as well.<sup>2/</sup>

WHEREFORE, Gadsden State respectfully requests the Presiding Judge to grant it Summary Decision under Issue 2 and, upon such action, to grant Gadsden State's application, as amended.

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<sup>1/</sup> Operating as proposed, WSGN would serve 131,235 persons within 2,359 square kilometers (Amendment, p. 7).

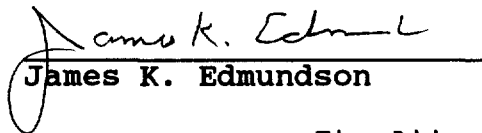
<sup>2/</sup> On June 4, 1992, Sable Community Broadcasting Corporation (hereafter Sable) filed a Motion for Acceptance Nunc Pro Tunc of Late - Filed Notice of Appearance and a Motion of Appearance. Gadsden State will take no position concerning the merits of Sable's Motion because with the acceptance of Gadsden State's amendment, its application is no longer mutually exclusive with Sable's application. Gadsden State would observe though that prior to designation, and at the Commission's express invitation, it worked closely with Trinity Christian Academy to resolve its mutual exclusivity with all of the applicants. Subsequent to designation, Gadsden State has also taken care to assure that its amended technical proposal was (and is) satisfactory to the Mass Media Bureau. In these circumstances, Gadsden State assumes that Sable will not take a position adverse to favorable action on this Motion and the grant of Gadsden State's application.

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Respectfully submitted,

**GADSDEN STATE COMMUNITY COLLEGE**

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[31754]

**MM Docket No. 92-70**

**APPENDIX A**





**CERTIFICATE OF SERVICE**

I, Virginia L. Davidson, a secretary in the law offices of Gardner, Carton & Douglas, do hereby certify that true copies of the foregoing "MOTION FOR SUMMARY DECISION" were sent June 8, 1992, by first-class United States mail, postage prepaid, or as indicated by hand to the following:

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